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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ZUNUM AERO, INC.,

11 Plaintiff,

12 v.

13 THE BOEING COMPANY, et al.,

14 Defendants.

CASE NO. C21-0896JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is Plaintiff Zunum Aero, Inc.'s ("Zunum") motion to modify the
17 court's order setting the trial date and related dates. (Mot. (Dkt. # 120); Reply (Dkt.
18 # 127).) Defendants The Boeing Company and Boeing HorizonX Ventures, LLC
19 ("HorizonX") (collectively, "Boeing") oppose the motion. (Response (Dkt. # 125).) The

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1 court has considered the parties' submissions, the balance of the record, and the
2 applicable law. Being fully advised,¹ the court DENIES Zunum's motion.

3 II. BACKGROUND

4 This suit centers on hybrid-electric and electric aircraft technology that Boeing,
5 former Defendant Safran S.A. ("Safran"), and certain of Safran's affiliates allegedly
6 misappropriated from Zunum while falsely assuring Zunum that they would invest in its
7 technology. (*See* SAC (Dkt. # 60) ¶¶ 1-22.) Zunum filed this lawsuit against Boeing and
8 the Safran Defendants on November 23, 2020 in King County Superior Court (*see* State
9 Records (Dkt. # 2) at 7), and Boeing and the Safran Defendants removed the suit to
10 federal court on July 2, 2021 (*see generally* NOR (Dkt. # 1)). On September 23, 2021,
11 the court scheduled this case for trial on September 11, 2023. (Sched. Order (Dkt. # 42)
12 at 2.) The court's scheduling order also included, in relevant part, the following
13 deadlines: expert witness reports due February 10, 2023; rebuttal expert reports due
14 March 10, 2023; discovery completed by March 31, 2023; and dispositive motions due
15 by May 9, 2023. (*Id.* at 2.)

16 Zunum now moves to adjust the case schedule, asking the court to, among other
17 things, (1) continue the trial date to December 11, 2023; (2) extend the fact discovery
18 deadline to April 28, 2023; (3) extend the opening expert reports deadline to May 10,
19 2023; (4) extend the rebuttal expert reports deadline to June 9, 2023; and (5) extend the

21 ¹ The court construes Zunum's request for a conference regarding modifications to the
22 case schedule as a request for oral argument on the instant motion. (*See* Letter (Dkt. # 122).)
The court, however, has determined that oral argument would not be helpful to its disposition of
the motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

dispositive motion deadline to August 9, 2023. (Mot. at 7-8.) According to Zunum, good cause for an extension exists because (1) “the highly technical nature of this case warrants sequenced fact and expert discovery”; (2) “a significant number of documents remain to be produced by both sides, and are unlikely to be produced before the February 10, 2023 deadline for service of opening expert reports”; and (3) “the original case schedule was set before Zunum’s prior counsel withdrew, resulting in a substantial period during which Zunum was unable to meaningfully advance discovery.” (*See id.* at 1.)

In response, Boeing contends that “the parties (and the [c]ourt) cannot make an informed decision about how little or how much additional time may be needed unless and until Zunum properly identifies its alleged trade secrets, which will greatly affect the scope of what remains to be done in this case.” (Resp. at 1.) Thus, “while Boeing is not necessarily opposed to modifying the case schedule at the appropriate time and with the benefit of Zunum’s forthcoming trade secret response,” Boeing argues that Zunum’s current proposal is not supported by “good cause or exceptional circumstances, is certainly premature, and may well be insufficient depending on the scope of the supposed trade secrets Zunum ultimately maintains are at issue.” (*Id.* at 1 (recognizing “that additional time may ultimately be necessary to complete discovery”).)

III. ANALYSIS

This court’s chambers procedures state that it “will not consider motions or stipulations to continue the trial date absent exceptional circumstances.” U.S. Dist. Ct. W.D. Wash., *Judge James L. Robart Chambers Procedures: Motions to Continue Trial Date* (Jan. 25, 2010), <https://www.wawd.uscourts.gov/sites/wawd/files/>

RobartTrialContinuanceRule.pdf. Similarly, this court’s scheduling order and Federal Rule of Civil Procedure 16(b)(4) provide that the case schedule may be modified “only upon good cause shown.” (Sched. Order at 2); Fed. R. Civ. P. 16(b)(4). “Good cause” for purposes of Rule 16 focuses on the diligence of the party seeking to modify the pretrial scheduling order. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992) (“Although the existence or degree of prejudice to the party opposing the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party’s reasons for seeking modification.”). Parties must “diligently attempt to adhere to that schedule throughout the subsequent course of the litigation.” *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 607 (E.D. Cal. 1999); *Johnson*, 975 F.2d at 607-08 (“If [the moving] party was not diligent, the inquiry should end.”). In part, the “good cause” standard requires the parties to demonstrate that “noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding [the parties’] diligent efforts to comply, because of the development of matters which could not have been reasonably foreseen or anticipated” when the parties submitted their joint status report. *Jackson*, 186 F.R.D. at 608. “[F]ailure to complete discovery within the time allowed is not recognized as good cause.” (Sched. Order at 2.)

The court concludes that Zunum has not established good cause or exceptional circumstances to justify extending the case deadlines at this time. To begin, the court rejects Zunum’s contention that sequenced discovery is warranted because of the “technical nature” of this case. (*See* Mot. at 8-9; Reply at 2.) In entering its scheduling order, the court was aware of the “technical nature” of this case but declined to accept the

1 parties' request to sequence fact and expert discovery. (Sched. Order at 2.) Instead, the
2 court granted the parties even more time than they had asked for in order to complete all
3 discovery. (*Id.*) Zunum has not pointed to anything that would lead the court to change
4 its conclusion regarding sequenced discovery. (*See generally* Mot.; Reply.) Indeed,
5 Zunum's request for sequenced discovery and an extension of the trial date appears to
6 stem, in large part, from Zunum's lack of diligence in proceeding with discovery in this
7 case. (*See generally* 12/8/22 Order at 2-6, 9-13 (discussing how discovery has proceeded
8 with respect to Zunum's trade secrets).) The scheduling pressure that Zunum claims to
9 now be experiencing is, in the court's view, simply a product of the long-existing case
10 schedule colliding with Zunum's repeated failure to adequately identify its alleged trade
11 secrets, which is "a key issue in this case." (*Id.* at 13.) And while the court agrees that
12 the withdrawal of Zunum's original counsel "create[ed] a [45-day discovery] delay that
13 was not anticipated when the [c]ourt entered the current case schedule" (Mot. at 10), this
14 was a situation of Zunum's making and does not, under the circumstances, establish good
15 cause or exceptional circumstances (*see* 9/2/22 Order (Dkt. # 74) at 4-5 (finding that
16 Zunum's prior counsel "sufficiently demonstrated good cause for withdrawing their
17 representation"))).

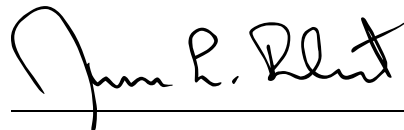
18 Nevertheless, the court is not without some flexibility with respect to the parties'
19 case schedule. The court agrees with Boeing's contention that Zunum's request to
20 modify the case schedule is premature "until the parties and the [c]ourt know the scope of
21 the dispute over Zunum's claimed trade secrets." (Resp. at 8.) Pursuant to the court's
22 December 8, 2022 order, Zunum must adequately identify the trade secrets at issue in this

1 case by January 20, 2023. (*See* 12/8/22 Order at 14.) Thus, after Zunum identifies its
2 trade secrets and the parties have a chance to assess what (if any) relief they may need
3 from the current case schedule, the court will reconsider extending the discovery and
4 other pretrial deadlines and continuing the trial date. If the parties wish to seek this relief,
5 they should file a stipulated motion to that effect once Zunum identifies its trade secrets.
6 Alternatively, if Boeing does not agree to modify the case schedule, Zunum may file a
7 motion seeking such relief. The parties should be aware that absent unusual
8 circumstances, the court does not grant short continuances and will instead move the
9 parties' trial date to the end of the court's trial calendar.²

10 IV. CONCLUSION

11 For the foregoing reasons, the court DENIES Zunum's motion to modify the
12 court's order setting the trial date and related dates (Dkt. # 120) without prejudice. The
13 parties may reraise the issue of modifying the case schedule after Zunum has identified
14 its trade secrets and the parties have assessed what (if any) relief they may need from the
15 current case schedule.

16 Dated this 29th day of December, 2022.

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19 JAMES L. ROBART
20 United States District Judge

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22 ² The court is currently setting trials in May 2024. If the court moves this matter to the
end of its trial calendar, the court will also issue a new scheduling order with respect to all
remaining pretrial deadlines.